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United States Senate

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

WASHINGTON, DC 20510–6125

WEB SITE: http://commerce.senate.gov

1258

December 19, 2013

The Honorable Anthony R. Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Secretary Foxx and Chairman Wheeler:

As you are aware, there is growing pressure to allow air passengers to use portable electronic devices (PEDs), such as computer tablets and e-books, during flights. To address these concerns, the Federal Aviation Administration (FAA) recently took steps to allow expanded use of PEDs during flights. Last week, the Federal Communications Commission (FCC) voted to explore the possibility of allowing systems that would permit passengers to use mobile communications services aboard airborne aircraft. In contrast to the FAA's new rules, the FCC's proposal could open the door to passengers making and receiving mobile phone calls while in flight.

Not surprisingly, there has been significant public opposition to allowing in-flight mobile phone calls. As Chairman of the Committee with jurisdiction over both of your agencies, let me add my voice to that growing chorus. I have serious concerns with the possibility of allowing in-flight mobile phone calls. I therefore strongly support the Department of Transportation's (DOT) decision to begin a process to examine the implications of allowing in-flight calls under its Aviation Consumer Protection Authority. That process – and the FCC's rulemaking – will allow consumers and other stakeholders the opportunity they deserve to voice their concerns.

During the DOT's and FCC's consideration of this matter, I encourage you to carefully consider the possibility of banning in-flight mobile calls and to fully examine all safety issues that the use of cellular voice services on aircraft may create. The ability to make a call on one's cell phone is not worth compromising the safety of a flight. I encourage you to ensure that safety remains the foremost concern for your agencies throughout this process.

Sincerely,

John D. Rockefeller IV
Chairman

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 8, 2014

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
624 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Rockefeller:

Thank you for contacting me regarding the Commission's proposal to modernize and harmonize its rules governing in-flight wireless services, and to express your concerns on the use of cellular voice services during flights. I welcome your comments on this issue, and appreciate the opportunity to clarify the limited, technology-focused *Notice of Proposed Rulemaking* (*NPRM*) the Commission approved on December 12, 2013.

The FCC's December *NPRM* represented the beginning of a process to consider whether and how we should revise our rules to account for new technology and to improve consumers' access to mobile wireless services onboard aircraft. As a first step in that process, we are collecting information and soliciting the views of consumers and other stakeholders on an array of questions that will assist us in determining if any modifications to our rules would serve the public interest. However, even if the record leads the Commission to update our rules, it will be the airlines' decision, in consultation with their customers and subject to applicable Department of Transportation (DoT) and Federal Aviation Administration (FAA) rules, whether or not to permit the use of data, text and/or voice services while airborne.

There are several key aspects to the Commission's proposal. First, we propose to harmonize our rules by expanding the current restriction on in-flight use of cellphones operating in the 800 MHz band to cover all mobile communications services in all mobile wireless bands. That the current rules do not apply to phones operating in other cellular frequencies represents a regulatory inconsistency that is poor policy.

Second, we propose to modernize our rules by permitting airlines using FAA-certified airborne access systems to decide, consistent with DoT and FAA rules, whether and how to make in-flight mobile wireless services available to their customers. As the expert agency on communications, it is the FCC's role to examine continuously our rules in light of such technology developments and to eliminate unnecessary or outdated regulations where appropriate. The principal reason the Commission adopted its existing rule was out of a concern that such use onboard an aircraft could interfere with a terrestrial network on the ground. Today, new airborne access systems, which have been in use for a number of years by airlines in other

countries, capably manage the mobile device's signal so that it does not cause interference to cell phone networks on the ground.

In light of these recent technological advances, the Commission is obligated to examine whether our existing restrictions on airborne use remain necessary to prevent harmful interference to mobile networks on the ground. Accordingly, the Commission is seeking comment on whether such airborne access systems can be used by airlines to effectively manage mobile broadband-capable devices operating on U.S. cellular bands. This proposal would replace current restrictions – which affect some, but not all, mobile bands – with a consistent regulatory framework that explicitly prohibits airborne use of cellular services in all frequency bands unless an aircraft is equipped with an airborne access system and is complying with all applicable DoT and FAA requirements.

Consistent with the views expressed in your letter, initial public response to the *NPRM* largely has focused on the possibility that modernizing our rules would open the door to allow passengers to make voice calls during flight. Many are concerned that adoption of this proposal would result in a less-enjoyable travel experience caused by other passengers engaging in unreasonably loud phone conversations during flight. These are not unreasonable concerns. As a frequent airline passenger, I would prefer that voice calls not be made on planes. However, it is the responsibility of the Commission to ensure, to the greatest degree we can, that our rules are based on sound *technological* judgments.

If the Commission determines that airborne mobile use is possible without negative effects to cellular networks, the *airlines*, under the FCC's proposal, would have the ultimate say as to whether and how to provide service using cellular airborne access systems, subject to applicable DoT and FAA rules. In fact nothing in this proposal would limit the ability of airlines to ban voice conversations in-flight. For example, an airline could choose to not offer voice service at all and to only provide data communications so that passengers can experience the kind of data-focused activities that you mention: surf the Web, send and receive text messages and email, or access social media to stay connected to friends and family.

Moreover, issues regarding passenger impact are more appropriately resolved by the DOT's Office of the Secretary (OST), which oversees aviation consumer protection issues, and the FAA, which has authority over safety issues. In this regard, OST recently issued an Advance Notice of Proposed Rulemaking (ANPRM) to examine the issue of air passengers' airborne use of mobile wireless devices for voice calls. The ANPRM seeks comment on whether allowing in-flight voice communications is unfair to consumers and, if so, whether such use should be banned or restricted. I am fully supportive of that examination.

Additionally, the FAA is actively engaged in this matter to the extent it impacts airline safety or operations. Earlier this year the FAA released a Congressionally-mandated report titled *Study on the Use of Cell Phones on Passenger Aircraft* indicating that foreign civil aviation authorities in numerous countries where such technology has already been deployed reported "no

documented occurrences of cell phones affecting flight safety on aircraft with on-board cellular telephone base stations." The study found that "[n]one of the civil aviation authorities reported any cases of air rage or flight attendant interference related to passengers using cell phones on aircraft equipped with on-board cellular telephone base stations."[1]

Congress can also address whether in-flight voice calls should be banned. Two bills have been introduced, H.R 3676 and S.1811, that would ban voice calls on flights. H.R 3676 has been reported out of the House Committee on Transportation and Infrastructure. The Commission is ready to offer technical assistance on these bills and any other similar legislation.

There will be months of public comment and debate on the specific issues raised in the *NPRM* prior to any adoption of final rules. We hope that all interested stakeholders, including the airlines, flight attendants, pilots, the flying public, and others will review our draft proposal closely and engage in our rulemaking process.

Once again, thank you for apprising me of your views on this important matter. Please let me know if there is any additional information about this matter I can provide. We will place your inquiry in the record of this proceeding.

Sincerely,

Tom Wheeler

[1] Section 410 in the FAA Modernization and Reform Act of 2012 (Public Law 112-95) directed the Administrator of the FAA to conduct a study on the impact of the use of cell phones for voice communications in an aircraft during a flight in scheduled passenger air transportation. Section 410 directed the study to include a review of foreign government and air carrier policies on the use of cell phones during flight; a review of the extent to which passengers use cell phones for voice communications during flight; and a summary of any impacts of cell phone use during flight on safety, the quality of the flight experience of passengers, and flight attendants.